

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of June, 1998

BEFORE

THE HON'BLE MR JUSTICE R V RAVEENDRAN

Writ Petition No 12348 of 1987

Between:

Maruti Rao,
s/o Anant Raikar,
Age: 45 years,
Occ: Goldsmith,
R/o Maski,
Taluk: Lingasugur,
District: Raichur

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.. Petitioner

(By Sri V T Rayaraddi, Advocate)

And:

1. The Divisional Commissioner,
Gulbarga;
2. The Assistant Commissioner,
Lingasugur, Dist. Raichur;
3. The Village Panchayat,
Maski, Tq: Lingasugur,
Dist. Raichur, by its
Secretary;
4. Shambanna,
S/o Mallayya,
Age: major, Occ: Agril.,
R/o Maski, Tq. Lingasugur,
District Raichur .. Respondents

(Sri A Nagarajappa, AGA, for R1 to R3;
Sri Jayavittal Rao Kolar, Adv. for R4)

Writ Petition is filed praying to quash Annexure-A dated 26-5-1987 bearing No.Rev.Petition No.24/APP.84.

This writ petition coming on for hearing this day, the Court made the following:-

ORDER

The petitioner claims to be the owner of house property bearing VPC No.1-2-86 in Maski, Lingasugur Taluk, Raichur District. As per the sale deed under which he purchased the property, the measurement of the property is 57' x 18'5".

2. On his application for permission to construct a building, the Town Panchayat Committee, Maski, issued a permission on 28-2-1979 for construction of a building on the said site measuring 52' x 17'. The petitioner claims to have constructed the building ^{as per the said permission.} While the building was under construction, the fourth respondent objected to the construction, before the Panchayat alleging that the construction was contrary to the permission and illegal. The Panchayat overruled the objections. The fourth respondent filed an appeal under Section 200 of the Karnataka Village Panchayats and Local Boards Act, 1959 ['the Act' for

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shot] alleging that petitioner had encroached the Government open space towards the North. According to petitioner, the second respondent passed an order dated 6-4-1983 holding that there was some violation by the petitioner and directed the petitioner to obtain modification of the permission to construct the building and also authorised the Town Panchayat to take action under Section 53(2) of the Act; and the Town Panchayat Committee passed a resolution dated 5-10-1983 holding that there was no encroachment by the petitioner from the old foundation area towards north; and the Administrator after spot inspection, passed an order dated 5-10-1983 giving permission for construction. The fourth respondent again filed an appeal before the Assistant Commissioner challenging the order dated 5-10-1983, impleading the petitioner as first respondent and the Maski Town Panchayat Committee as second respondent. The Assistant Commissioner passed an order dated 26-7-1984 [Annexure-B] holding as follows:-

"..... The disputed house construction was measured. It measures 53'6" East to West and 22'5" North to South (in the back side of the building) and 20' North to South (in the front portion of the building). The building has been constructed by and large on the old foundation only except a little bit of encroachment. The TPC Maski has issued building construction permission

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on 28-2-79 for construction on 52' x 17' site. It has to be therefore presumed that there is construction of the building on a slight excess area. The TPC Maski is directed to regularise this excess area by recovering penal upset price at double the market value of this excess price of site as the RCC construction has been completed except plastering work and finishing work."

In view of the said finding, the Assistant Commissioner proceeded to pass the following order:-

"The new construction by the respondent 1 is in no way inconveniencing the public or the appellant. However, opening parnals towards the North of the building and opening water letout and latrine towards the East of the building would inconvenience the appellant. Therefore, the respondent 1 is prohibited from opening more than one door on the North and from construction of Katta on the Northern side of the new construction and he is further prohibited from opening parnals water letout and construction of latrine on the southern side of the new building. He is also prohibited from doing any thing on the open space on the northern side of the building which may inconvenience the appellant and the general public. The respondent 1 is directed to comply with the above conditions in 7 days.

The construction permission issued by the Administrator TPC Maski on 5-10-83 is modified as above. The Administrator TPC Maski is directed to recover the upset price as stated above and further take action for compliance of the above condition stipulated above that is, he should see that the doors and parnals latrine etc., which are prohibited above

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are closed and report compliance so as to consider the vacation of the stay order issued by this Court'.

3. Feeling aggrieved, the fourth respondent filed a revision petition before the Divisional Commissioner. The Divisional Commissioner has allowed the revision petition by his order dated 26-5-1987 [Annexure-A]. The following findings of the Divisional Commissioner and the final order are relevant and they are extracted below:-

"The orders of the learned Assistant Commissioner, clearly show that the respondent Shri Maruti had encroached upon the panchayat lands. He had also violated construction permission by deviating his own construction plan as approved by the TPC Maski. Surprisingly enough the Assistant Commissioner Lingsugur decided to take a lenient view on this encroachment on the grounds that the construction was nearing completion and ordered Town Panchayat Committee to compound this offence. This clearly shows that the officers have accepted the offence of the respondent 1 to encroach upon the land as he likes and throw some money on their faces to get these encroachments set rights. I cannot imagine more regarding thing that can happen to these so called enforces of the law.

In the light of the above, I have no hesitation to observe that the respondent 1 Shri Maruti has violated the permission granted to him and made a mockery of the law and its officers. I therefore accept the revision petition, set aside the impugned order of the learned Assistant Commissioner, Lingsugur and direct the

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there was some encroachment, the demolition of the RCC building in the encroached portion will affect the other portions of the building and it will cause great hardship to the petitioner. He, therefore, contends that the order of the Divisional Commissioner should be set aside and the order of the Assistant Commissioner should be restored.

6. There is absolutely no merit in the contentions of the petitioner. It should be remembered that the Town Panchayat Committee had ~~clearly~~ granted permission to construct ^{only} on an area measuring 52' x 17' acting on the representation of the petitioner that he was the owner of an area measuring 57' x 18'5". Even when the construction was in progress, the fourth respondent objected to the Town Municipal Council. It is not as if that there was no objection for the construction. In spite of the fourth respondent objecting to the construction alleging that petitioner had encroached upon Government land, the petitioner chose to proceed with the construction and complete the construction. In such a situation, the petitioner cannot be heard to say that any hardship

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will be caused to him by demolishing the construction in the encroached portion. It does not lie in the mouth of the encroacher to say that he may be put to hardship if the encroachment is removed, particularly when the encroachment has been pointed out even when the encroachment was in progress. The contention of the petitioner that the encroachment is hardly about 4' and, therefore, double the market value should be recovered and the construction on the encroached portion should not be demolished. If such pleas are to be accepted and encroachments pardoned, it will be a green signal for others to encroach upon Government land. The order of the Divisional Commissioner is just and fair. He has noticed the contentions of the parties and on the admitted facts, he ^{has} reached the ^{correct} conclusion. As pointed out above, it is not in dispute that the petitioner's sale deed showed that the property measured 57' x 18'5". It is not in dispute that the construction permission was for 57' x 17'. It is also not in dispute that the actual construction is 53'6" x 22'5". In view of these admitted facts, it cannot be said that there is no encroachment at all and it cannot also be said that the encroachment should be pardoned.

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7. The learned Counsel for the petitioner lastly contends that the Divisional Commissioner did not give a hearing to the petitioner and, therefore, the said order should be interfered with. This again is untenable. 33 adjournments were granted by the Divisional Commissioner before he decided to proceed with the matter. He, therefore, issued a final notice to all parties to appear before him on 25-4-1987. The parties were also informed that if they did not appear, a decision will be taken exparte. In spite of such final notice, the petitioner continued to remain absent. In the circumstances, it cannot be said that due opportunity was not given. Due opportunity was given and petitioner for obvious reasons had decided to stay away, so that he can make a ground that opportunity was not given to him. Further, I requested the learned Counsel for the petitioner, to point out any errors in the order of the Divisional Commissioner and how the order ~~could have been~~ ^{can be} different even if the matter is to be sent back to the Divisional Commissioner. There

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is no satisfactory answer at all. The blatant encroachment cannot be ~~derived~~ or covered up. Therefore, there is no merit in this petition.

8. Petition is, therefore, dismissed with costs of Rs.500/- payable by the petitioner to the fourth respondent and costs of Rs.500/- to Respondents 1 and 2.

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Sd/-
JUDGE

Bnr/-

